

their license or lease suitable spectrum in the first place, the cost and burden of gaining access to *this spectrum remains very high.*

The Commission has also done significant work recently to identify and allocate additional spectrum for CMRS, including the new Advanced Wireless Service (AWS) spectrum that will be auctioned soon. Even this spectrum is limited, however, and much of it will not be usable for providing commercial services until existing incumbents are relocated (a time-consuming, complex, and potentially expensive project in and of itself) and equipment capable of using this spectrum – including handsets and network infrastructure – has been developed, certified, and placed on the market. This means that, as a practical matter, most of this newly-allocated spectrum is not readily available, nor is there any guarantee of success at auction for any carrier. Thus, this newly-allocated spectrum does not provide an immediate, feasible alternative for potential new entrants.

It should also be noted that roaming actually increases the efficient use of the country's limited spectrum resources. When a customer of another carrier roams onto a licensee's network and places or receives a call, this roaming customer utilizes spectrum not otherwise in use at that instant and generates roaming revenue for the licensee.

C. Regional and Rural Carriers Play a Vital Role in their Regions and Communities and are an Essential Element of a Reliable Nationwide Communications Infrastructure

Just as the largest wireless carriers provide a valuable service through the provision of nationwide coverage, regional and rural carriers also play a vital role in making wireless service available to all U.S. consumers. As discussed above, many smaller carriers provide service in areas not covered by the networks of the large regional and nationwide carriers, and in some areas, they may be the only source of wireless service available. However, these regional and rural carriers also provide much more.

The regional and local focus of these carriers enables them to tailor their networks to meet the needs of the people who live and work there, providing the type of coverage and service that goes beyond the highway corridor to reflect the actual lives of the area's residents and communities. Their local and regional presence results in strong ties both with and within the communities they serve, which is reflected in the level of service they provide to consumers in these areas. These qualities make regional carriers an attractive service option for consumers. Many regional carriers, like SouthernLINC Wireless, provide service not only in rural regions, but also in larger metropolitan areas in direct competition with the nationwide carriers, and, despite the presence of the nationwide carriers, hundreds of thousands of consumers in these areas nevertheless opt to receive service from the regional carrier.

Regional carriers also continue to be a source of innovation within the wireless industry and are often the first to introduce new services, pricing plans, and other innovations within their regions, despite the presence of the nationwide carriers. Nationwide carriers are then compelled to match these innovations in order to compete in the region and, as a result, these new services and offerings become widely available throughout the country. For example, within its service area in the Southeastern United States, SouthernLINC Wireless was the first iDEN carrier to provide wireless data service and the first CMRS carrier to provide a prepaid service offering that included PTT service.

In addition, regional and rural carriers play a vital role in public safety, often serving as an important component of emergency communications. For instance, because of its expansive and reliable coverage within the region, SouthernLINC Wireless' service is widely used by local and statewide public safety agencies, local governments, public utilities, and emergency services such as ambulance companies. In fact, SouthernLINC Wireless' CityWatch program in Atlanta,

Georgia, provides an excellent example of both regional carrier innovation and the public safety role of regional carriers. In June 2000, SouthernLINC Wireless joined with the Metropolitan Atlanta Crime Commission to establish the CityWatch network, which was designed to allow law enforcement agencies – including the Atlanta Police Department and the Marietta Police Department – and numerous private security forces in the Atlanta metropolitan area to communicate with each other directly and instantly over a private network operated by SouthernLINC Wireless.

Additionally, regional and rural carriers also serve as an essential link in establishing and maintaining a reliable nationwide communications infrastructure. When Hurricane Katrina slammed into the Gulf Coast region on August 29, 2005, both regional and nationwide carriers immediately launched large-scale efforts to restore wireless services which, due to the destruction of many landline facilities throughout the region, were for a time the primary means of communication. SouthernLINC Wireless – whose service area includes the Gulf Coast regions of Alabama, Mississippi, and the Florida panhandle – was able to keep its network largely operational in the affected areas throughout the storm and its immediate aftermath. As of September 1, 2005, SouthernLINC Wireless had ninety-eight percent of its sites up and operational and was the sole source of wireless communications in Gulfport, Mississippi, and along much of the Mississippi coast, providing much-needed communications service for emergency, utility, and government personnel – including the U.S. Coast Guard – conducting rescue and relief efforts. By September 8, 2005, all of SouthernLINC Wireless' existing sites were on the air and an additional two sites had been put into service. During this time, SouthernLINC Wireless was able to fulfill urgent communications needs throughout the Gulf

Coast region of Alabama, Mississippi, and Florida until other wireless networks could be brought back into service.

One example of the critical role that SouthernLINC Wireless played in the recovery and restoration efforts immediately following Hurricane Katrina can be found in the efforts of Mississippi Power to restore electric service to its 195,000 customers in the Gulf Coast region, all of whom lost power as a result of Katrina. Despite significant damage to its infrastructure (including the destruction of its own corporate headquarters) and enormous logistical hurdles, Mississippi Power succeeded in restoring power to all of its customers who could safely receive it in just twelve days.²⁹ During this time, SouthernLINC Wireless handsets provided virtually the only means of communication on Mississippi's Gulf Coast for the first seventy-two hours, and a unique workaround developed by SouthernLINC Wireless subsequently let its customers bypass the landline switches in the area (which were either overworked or incapacitated) in order to make voice telephone calls.³⁰ As a result, according to an article in USA Today, "[w]hile others struggled to communicate at all, Mississippi Power could hold conference calls with line crews in the field."³¹

On November 16, 2005, the Senate Committee on Homeland Security and Governmental Affairs held a hearing to explore what the U.S. Government could learn from the private sector's response to Hurricane Katrina and invited David Ratcliffe, President and CEO of Southern Company (the parent company of Mississippi Power) to speak about Mississippi Power's

²⁹ / See Dennis Cauchon, *The Little Company that Could*, USA TODAY, Oct. 9, 2005 (updated Oct. 10, 2005), available online at http://www.usatoday.com/money/companies/management/2005-10-09-mississippi-power-usat_x.htm. A printed copy of this article is provided as Attachment C to these comments.

³⁰ / *Id.*

³¹ / *Id.*

response and remarkable recovery. During his testimony, Mr. Ratcliffe singled out the service provided by SouthernLINC Wireless, stating that “[c]ommunications is crucial in responding to disasters – especially the ability to communicate with thousands of workers” and further stating that for most of the twelve days it took for Mississippi Power to restore service, “the only viable communication we, or the coast of Mississippi, had” was SouthernLINC Wireless.³²

Much of SouthernLINC Wireless’ performance during and immediately after Hurricane Katrina can be attributed to its regional focus. Because of this regional focus, SouthernLINC Wireless’ infrastructure was designed specifically to withstand stressful weather conditions in the Southeast, including hurricanes. By deploying a regional infrastructure with considerable redundancy and the ability to quickly implement emergency “work-arounds” where necessary, SouthernLINC Wireless was able to restore its operations in the affected area to near pre-Katrina levels within three days and was even able to add capacity to accommodate the dramatic spike in demand for wireless service. SouthernLINC Wireless’ regional ties also facilitated its ability to immediately address any systems issues in the affected area and to work closely with critical customers to find solutions to quickly meet their communications needs.³³ If SouthernLINC Wireless had been able to enter into a roaming agreement with Nextel Partners, or if Nextel allowed its own customers to roam onto SouthernLINC Wireless’ network, SouthernLINC Wireless could have also provided similar service to their customers in those regions affected by

³² / *Hurricane Katrina: What Can Government Learn from the Private Sector’s Response?: Hearing Before the Senate Comm. on Homeland Security and Government Affairs*, November 16, 2005 (Testimony of David Ratcliffe, President and CEO of Southern Company). A copy of Mr. Ratcliffe’s testimony is provided as Attachment D to these comments.

³³ / For example, during the early phase of Katrina recovery, an issue was identified with calls placed to the 228 area code (covering much of the Mississippi Gulf Coast, including the cities of Gulfport and Pascagoula) due to a problem with the local phone company. SouthernLINC Wireless was able to program its public safety and utility customers with toll-free numbers for their SouthernLINC Wireless phones that allowed them to receive phone calls from non-SouthernLINC Wireless customers.

Hurricane Katrina that were either not covered by the networks of Nextel or Nextel Partners or where their service had been disrupted.

SouthernLINC Wireless therefore submits that one of the lessons of Hurricane Katrina is that large wireless carriers and smaller regional carriers are complementary and indispensable components of a reliable nationwide communications infrastructure. The value of these complementary roles may be lost, especially in times of emergency, if these carriers' end-users are prevented from roaming on each other's networks.

D. Roaming Would Provide Interoperable Communications to Emergency Responders and Providers of Disaster Relief and Recovery

Nationwide access to the full range of mobile wireless services also confers a significant public interest benefit in addition to the interests of consumers – namely, interoperability for public safety and disaster response and recovery.

Throughout the nation, public safety, government agencies, utility maintenance and recovery crews, and other public service entities utilize commercial mobile services either as their primary means of communication or as a back-up to their own private voice, dispatch, and data communications systems. With nationwide access through automatic roaming to commercial mobile voice, dispatch/PTT, and data services, these entities would effectively have interoperable communications capabilities, dramatically improving their ability to coordinate their activities and efforts during emergencies, particularly during large-scale response and recovery operations involving multiple entities from around the country.

SouthernLINC Wireless itself serves many public safety and utility customers within its region who may be – and frequently are – called on to assist in emergencies or disaster recovery efforts outside of SouthernLINC Wireless' service territory, and these customers rely on access to the full range of wireless voice, dispatch/PTT, and data communications services in order to

carry out their duties. As an example of this need, Alabama Power Company, Georgia Power, and Gulf Power, all of which use SouthernLINC Wireless' services and system for communications for their crews, recently sent letters to SouthernLINC Wireless emphasizing their need for dispatch roaming when operating outside of their service area in order to assist other utilities in storm recovery and restoration efforts.³⁴ As the letter from Alabama Power Company states, "The importance of communications is foremost in our minds as we reach the end of what has been a devastating hurricane season. I hope this letter has clearly described for you the important role that dispatch roaming would fulfill in our emergency restoration efforts."³⁵

E. Automatic Roaming Must be Available for All Mobile Wireless Services

One of the defining characteristics of CMRS is mobility. Although the majority of CMRS usage generally occurs within the user's "home" area, consumers also expect and rely on having access to voice, data, PTT, and other wireless services when they travel, even if they are outside their carrier's service territory. For customers of regional carriers, this access can only occur as a practical matter if roaming service is available for a reasonable rate. Consumers expect and accept that they may have to pay additional charges when they roam outside of their home network, but if these charges are too high, roaming becomes too expensive, and the consumer is essentially forced to forgo this access due to its cost. Similarly, if the availability of roaming is restricted only to certain services (such as voice), consumers are effectively denied

³⁴ / Letter from Charles F. Wallis, Emergency Operations Center, Alabama Power Company, to Greg Clyburn, SouthernLINC Wireless, dated November 21, 2005; Letter from Aaron B. Strickland, Distribution and Emergency Operations Manager, Georgia Power, to Holly Henderson, SouthernLINC Wireless, dated November 21, 2005; Letter from Andy McQuagge, Company Emergency Management Center Manager, Gulf Power, to Gloria Ellwood, SouthernLINC Wireless, dated November 22, 2005. Copies of these letters are provided as Attachment E to these comments.

³⁵ / *Id.*

access to other wireless services that make up an increasingly significant and important component of CMRS.

1. The Need for Consumer Access to Mobile Wireless Services through Automatic Roaming During Times of Emergency

The need for consumers to have access to wireless service beyond their carrier's service area does not affect only those who travel by choice. As the Commission is aware, the devastation wrought by Hurricane Katrina resulted in the displacement and involuntary relocation of hundreds of thousands of residents not only from New Orleans but also from SouthernLINC Wireless' service area in the Gulf Coast regions of Mississippi and Alabama. Because SouthernLINC Wireless has been unable to obtain reasonable roaming arrangements despite its best efforts, SouthernLINC Wireless customers who have been displaced or involuntarily relocated outside of its service area would have either suffered decreased access to wireless communications service or, for those compelled to relocate to areas served by Nextel Partners (such as Shreveport and Lafayette, Louisiana, or Little Rock, Arkansas), would have had their access to wireless service cut off altogether.

There is no technological reason for these customers to suffer through this type of experience. The iDEN networks of Sprint Nextel and Nextel Partners are fully capable of accommodating roaming SouthernLINC Wireless customers and are capable of providing them the same voice, digital dispatch/PTT, and data services that they provide each other and to customers of foreign iDEN carriers. However, due to the unreasonable and discriminatory roaming policies and practices pursued by Sprint Nextel and Nextel Partners, customers of SouthernLINC Wireless who were displaced or relocated outside of its service area as a result of Hurricane Katrina could only receive basic voice roaming service from Sprint Nextel (for which Sprint Nextel charges excessive rates) and could not receive any PTT or data services.

Nevertheless, they fared better than those relocated to areas served by Nextel Partners where, as a result of Nextel Partners' long-standing refusal to roam, they would not have been able to receive any wireless service whatsoever.³⁶

2. The Broader Impact on U.S. Consumers and on the U.S. Economy of the Availability of Automatic Roaming for All Mobile Wireless Services

The explosive growth of the mobile wireless sector over the past decade has had a significant impact on both consumers and on the U.S. economy as a whole. In addition to direct supply side benefits generated by spending on wireless products, equipment and services, the creation of millions of jobs, and billions of dollars in government revenues collected through spectrum auctions, taxes, regulatory fees, etc., the wireless sector also produces enormous productivity gains worth billions of dollars each year to the U.S. economy. As discussed below, roaming must be available for all mobile wireless services – including voice, data, PTT, and other services – in order for these gains to be fully realized and made available to all U.S. consumers and enterprises.

As the Commission is aware, CTIA recently commissioned Ovum, a highly-respected international research and consulting firm in the telecommunications and information technology field, to conduct an in-depth study and analysis of the impact of the U.S. wireless telecommunications industry on the U.S. economy. Utilizing conservative figures and assumptions, Ovum estimated that the use of wireless data applications in the United States resulted in an economic benefit through productivity gains of more than \$8.5 billion in 2004

³⁶ / It is ironic to note that, at the same time, a Canadian customer of Telus (a Canadian iDEN carrier) could visit these same areas and receive the full suite of roaming services – including voice, dispatch/PTT, and data – denied to displaced SouthernLINC Wireless customers.

alone.³⁷ Ovum based this estimate on the use of just five wireless data applications, stating that it “represents a lower limit on the current productivity gains generated” since it does not include the impact of additional data applications that are in use but which were not covered by their study.³⁸ Furthermore, on the basis of the same five wireless data applications, Ovum projects that the productivity gains resulting from the use of wireless data services will result in an annual economic benefit in the U.S. of approximately \$13.1 billion in 2005, \$63 billion in 2010, and \$85.5 billion in 2015.³⁹ According to Ovum, additional wireless applications that will emerge over the next five years will further increase these identified gains “exponentially.”⁴⁰

Ovum’s analysis of the economic benefits of wireless data services, including nine real-world case studies of mobile data services provided by CMRS carriers, is particularly noteworthy.⁴¹ Of the nine Ovum case studies, seven required access to wireless data services on a large regional or nationwide basis in order for the full economic benefits to be realized, regardless of where the company or organization itself was located. The resulting implication is that enterprises or organizations located in areas not served by the nationwide carriers would be unable to recognize similar economic benefits – even when their own carrier can provide these services – if roaming for data and other wireless services is not available to them. These entities would therefore be placed at a significant economic and competitive disadvantage simply

³⁷ / David Lewin and Roger Entner, Ovum, *Impact of the U.S. Wireless Telecom Industry on the U.S. Economy: A Study for CTIA – The Wireless Association*, September 2005 (“Ovum Report”) at 21. A copy of the full Ovum Report is available through the CTIA website at http://files.ctia.org/pdf/Final_OVUM_Indepen_Report_Economy.pdf.

³⁸ / *Id.* at 21-22.

³⁹ / *Id.* at 31-34.

⁴⁰ / *Id.* at 32.

⁴¹ / *Id.*, Annex C

because they are geographically located in a rural or underserved area and have no access to data roaming service.

Further, the overall benefit of wireless services to the U.S. economy as a whole would be substantially diminished if significant segments of the population are unable to recognize the gains that these services can provide. Conversely, with nationwide access to data and other wireless services through roaming, these entities would also be able to reap the substantial economic benefits that such services can provide, and these benefits would in turn inure to the communities where they are located, as well as to the broader U.S. economy.

V. MANUAL ROAMING IS INSUFFICIENT TO MEET THE NEED FOR CONSUMER ACCESS TO MOBILE WIRELESS SERVICES; AUTOMATIC ROAMING IS REQUIRED

As demonstrated above, roaming is essential in ensuring that all U.S. consumers have equal access to mobile wireless services, and equal access can only be ensured through the utilization of automatic roaming.

Manual roaming generally requires consumers to enter a credit card number in order to make a roaming call. In practice, the consumer must first correctly enter a 16-digit credit card number, then (in many cases) enter the expiration date of the card, and then wait for authorization both from the credit card issuer and the carrier providing the roaming service before the call can even be placed (assuming that every digit has been entered correctly by the consumer, processed correctly by the carrier and by the credit card company, and that there is no interruption in the communications between any of these parties during processing). This process is an extraordinarily burdensome and time-consuming one that, as a practical matter, most consumers are no longer willing to go through. In fact, as far back as 1996, during one of the predecessor proceedings to this *NPRM*, one carrier commenter characterized manual roaming

as a "technological dinosaur" and noted that, in its experience, ninety-five percent of customers preferred not to place calls at all rather than to deal with manual roaming.⁴²

Aside from the burden involved, manual roaming also requires that the consumer have a credit card with them that they can use. In the case of Hurricane Katrina, many of the people who were dislocated may not have had the time or opportunity to take their credit cards with them, may have lost them during the storm or while evacuating, may have needed to preserve their card balances in order to pay for essentials such as food, shelter, and clothing, or may not have had credit cards in the first place. For these people, manual roaming would have effectively been unavailable. Furthermore, the substantial majority of wireless consumers are not even aware of either the existence of manual roaming or how to activate manual roaming. For these reasons, manual roaming is entirely insufficient as a means for ensuring that consumers have access to wireless services.

In contrast, automatic roaming eliminates these burdens and obstacles and is virtually invisible to the customer. From a carrier perspective, automatic roaming is also far easier to administer and implement than manual roaming, a solution that was established when the CMRS industry was in its infancy. Since that time, CMRS networks, systems, and processes for handling roaming have become much more sophisticated, to the point where it is far more efficient for them to process roaming calls automatically, thus eclipsing the need for manual roaming. In fact, manual roaming, in comparison to automatic roaming, is now widely viewed by many carriers as a burden. From both a consumer and a carrier perspective, this rule is ineffective as a means of ensuring the availability of roaming for all wireless services.

⁴² / *1996 Order and Roaming NPRM*, CC Docket No. 94-54, Comments of the Alliance of Independent Wireless Operators at 8 (filed Oct. 4, 1996).

Therefore, any rules and policies that are adopted in order to ensure the availability of roaming for wireless services must require the provision of automatic roaming.

SouthernLINC Wireless notes that, while generally ineffective, a manual roaming rule is still better than no roaming rule at all, and it would support elimination of the manual roaming rule only after an automatic roaming rule has been fully implemented.

VI. COMPETITION AND ECONOMIC ISSUES

In the *NPRM*, the Commission requested that commenters address the potential impact that the adoption of an automatic roaming rule may have on CMRS competition, as well as what the potential costs of such a rule could be. The Commission also addressed concerns that have been raised that automatic roaming obligations could potentially serve as a disincentive to the development and deployment of new services, technologies, and service offerings.

SouthernLINC Wireless believes that any such concerns are unfounded and that the adoption of automatic roaming obligations will actually serve to promote both competition and the ongoing development and deployment of innovative new wireless services and technologies, all to the benefit of wireless consumers.

In fact, SouthernLINC Wireless submits that it is actually the lack of any clear automatic roaming obligation that poses the greatest danger to competition and to consumers, especially given the current trend of industry consolidation. Market forces have yet to make automatic roaming for all mobile wireless services available to all wireless consumers, and the continued unavailability of automatic roaming could economically disadvantage significant numbers of U.S. consumers – including individual and enterprise users – as well as prevent the U.S. economy as a whole from recognizing the full economic benefits that wireless voice, data, PTT, and other services are expected to bring over the next five to ten years.

A. The Nature of Competition for Wholesale Roaming Services

For several years now, the Commission has consistently characterized the CMRS market as competitive, frequently pointing to CMRS as an example of market success. While it is true that competition for retail CMRS services appears vigorous, this is not necessarily the case for the underlying wholesale services – such as roaming – that serve as necessary inputs for the provision of retail services to end-users. In fact, as discussed below and as explained in detail in the attached McAfee Report,⁴³ the separate market for wholesale roaming service is better characterized as one where monopoly and duopoly situations prevail and where, unlike the market for retail CMRS, there has already been market failure and where future market failure is likely to occur.

In order for a carrier to be able to provide roaming service to its own customers, it must first obtain roaming service on a wholesale basis from the carrier with whom it wishes to roam. However, the pool of available roaming partners is much more limited than the total number of CMRS carriers operating in a given region because at the wholesale level, unlike at the retail level, different air interface technologies are not substitutable. In other words, while a retail customer is generally free to receive service from any CMRS carrier in the area regardless of technology, carriers can only receive wholesale roaming service from a carrier that uses the same technology (*e.g.*, an iDEN carrier can only roam with another iDEN carrier, just as a CDMA carrier can only roam with another CDMA carrier).

As indicated in the McAfee Report, because of the lack of substitutability between different carrier technologies, any analysis of the state of competition for wholesale roaming services must therefore consider each technology as defining a separate wholesale roaming

⁴³ / See Attachment B to these comments.

market.⁴⁴ For example, if a given region is served by two CDMA carriers, a GSM carrier, and an iDEN carrier, then there are four carriers competing in the retail services market in the region.

However, from the standpoint of wholesale roaming, there are in fact two carriers competing in the market for wholesale CDMA roaming services, one carrier in the market for wholesale GSM roaming services, and one carrier in the market for wholesale iDEN roaming services. These facts demonstrate the level of market concentration and the prevalence of monopoly and duopoly situations that carriers seeking roaming partners must contend with.⁴⁵

As SouthernLINC Wireless has frequently stated, the market for wholesale iDEN roaming services is essentially a monopoly market with only one provider – either Sprint Nextel or Nextel Partners – in any given area outside of SouthernLINC Wireless's service territory in the Southeast. However, as illustrated in greater detail in the McAfee Report, the markets for wholesale CDMA and GSM roaming services are only slightly less concentrated in most regions. For example, the McAfee Report shows that, of the fifty largest BTAs, only two BTAs have three or more CDMA carriers and three or more GSM carriers.⁴⁶

In turn, these monopoly and duopoly providers of roaming services have strong economic incentives, as well as the ability, to engage in anticompetitive conduct and practices that would inhibit or prevent new market entry and potentially foreclose regional carriers from the broader CMRS market entirely. The attached McAfee Report explains these incentives, their operation, and their consequences in detail. Other than the ability to deny roaming services altogether, the most significant ability carriers in a monopoly or duopoly situation have is the ability to charge roaming rates that are not just beyond the competitive level but also well beyond the level of the

⁴⁴ / McAfee Report at 7.

⁴⁵ / *Id.* at 7, 10 – 11.

⁴⁶ / *Id.* at 11.

carrier's own retail rates for its retail CMRS services.⁴⁷ In SouthernLINC Wireless' experience, this behavior is exactly what is occurring with iDEN roaming because it must pay roaming rates substantially above Nextel's retail rates. SouthernLINC Wireless understands that other carriers have encountered such practices as well.

Wholesale roaming rates that exceed retail rates are a clear example of market failure. A carrier's prevailing retail rates in a competitive market are rates that a carrier voluntarily offers to the public and which inherently cover all the costs of providing the service, including network operating costs and such costs as customer acquisition, customer service, and customer support, as well as a reasonable profit for the carrier.⁴⁸ However, several of the costs that must be recouped in a carrier's retail rates – particularly customer acquisition and support costs, which must account for a portion of retail revenues – are not incurred and therefore need not be recouped when a carrier provides roaming services. While the provision of roaming service does involve certain unique costs, these costs are generally marginal and are more than offset by the customer-related costs that are avoided.⁴⁹

Nevertheless, a carrier's lowest prevailing retail rates still provide a suitable point of reference when considering the rates that a carrier charges for roaming, since the existence of robust retail competition, together with the need to recover the costs of providing retail service while recognizing a profit, means that these retail rates will implicitly be reasonable.⁵⁰ To the extent the rates a carrier charges for wholesale roaming exceed the lowest prevailing retail rates

⁴⁷ / *Id.* at 12.

⁴⁸ / *See Id.* at 8 – 10.

⁴⁹ / *See Id.* at 8.

⁵⁰ / *See Id.* at 16 – 18.

that it charges its own subscribers, these roaming rates would presumably be unreasonable and excessive.⁵¹

The next step, of course, is how to determine what a carrier's lowest prevailing retail rate is in order to develop an appropriate comparison to that carrier's wholesale roaming rates. Based on the recommendations in the McAfee Report, SouthernLINC Wireless submits that the most appropriate approach would be to look to carriers' retail rate plans for non-business customers that include the largest "buckets" of minutes and use these plans to determine a carrier's lowest prevailing retail rate on a per-minute basis.⁵² This approach would involve a straightforward analysis using easily accessible and publicly available information. Rate plans for non-business customers are generally available on carriers' individual websites, and those plans that provide the biggest buckets of minutes are most likely to reflect a volume discount (since one would expect a carrier's wholesale rates or retail rates to businesses or enterprise users to incorporate a volume discount of some sort).⁵³ Determining the carrier's lowest prevailing retail rate would then simply be a matter of dividing the price for the plan by the number of minutes provided in the "bucket." While this approach is not perfect, it is still relatively conservative, since any discrepancies or margin of error would actually tilt towards a finding that the roaming rate is reasonable.⁵⁴

As discussed later in Section IX of these comments, this approach can also be used by the Commission as a simple, efficient, fair, and effective mechanism for assessing, adjudicating, and remedying roaming issues and disputes. Specifically, as recommended in the McAfee Report,

⁵¹ / *See Id.* at 16.

⁵² / *Id.* at 18.

⁵³ / *Id.*

⁵⁴ / *See Id.* at 18.

the Commission should adopt the presumption that wholesale roaming rates that exceed a carrier's lowest prevailing retail rates (as determined pursuant to the approach discussed above) are presumptively unreasonable.⁵⁵ As set forth in the McAfee Report, the adoption of such a presumption, together with the adoption of an automatic roaming rule, would serve to address the lack of competition and potential for further market failure in the provision of wholesale roaming services and provide a minimally intrusive way for the Commission to ensure that regional carriers do not get unfairly squeezed.⁵⁶ At the same time, these requirements would not prevent carriers who provide roaming services from earning a reasonable return on their investment in their networks, since the requirement that wholesale roaming rates not exceed the carrier's own retail rates still allows for a healthy return on roaming while acting as a check on a carrier's ability to unfairly exercise market power.⁵⁷

B. Regional Carriers are Essential to a Competitive Mobile Wireless Market

Ever since CMRS was in its infancy, regional carriers have been an essential element in developing and maintaining a competitive retail CMRS market. Regional carriers were often the first carriers to provide any CMRS service in a given area, including large urban markets, and it was only through roaming with these regional carriers that the nationwide carriers were able to build out their nationwide networks and coverage areas in the first place. Now, with the nationwide carriers holding substantial market shares – and market power – and with the industry itself continuing to undergo significant consolidation, regional carriers are even more essential in ensuring that consumers will have access to competitive mobile wireless services now and in the future.

⁵⁵ / *See Id.* at 16.

⁵⁶ / *Id.* at 17.

⁵⁷ / *Id.*

As previously discussed in Section IV of these comments, regional carriers often have in-region service or coverage advantages over the larger nationwide carriers providing service in the same region. This compels the nationwide carriers to focus on improved services and service quality for consumers in the region in an effort to match what the regional carrier provides or to differentiate themselves not only from each other, but from the regional carriers as well.

Regional carriers are also often the first to introduce new services, pricing plans, and other innovations within their regions – innovations which the nationwide carriers must either match or adopt. As an example, SouthernLINC Wireless was the first iDEN carrier in its service area, which covers both rural and major urban markets in the Southeastern United States, to provide wireless data service and the first CMRS carrier to provide a prepaid service offering that included PTT service – services that the nationwide carriers operating in this region have since attempted to match. The McAfee Report also describes innovative service plans, including flat-rate unlimited local and long distance calling plans, which have been introduced by two regional CDMA carriers, Leap Wireless and MetroPCS.⁵⁸ According to the McAfee Report, none of the nationwide carriers offer comparable plans.⁵⁹

However, as discussed elsewhere in these comments, consumers need to be able to continue to receive access to mobile wireless services when, for whatever reason, they find themselves located outside of their “home” carrier’s service area. This capability is, understandably, highly valued by consumers, but the only way that regional carriers can provide such service to their customers is through roaming. Many consumers in service areas covered by both regional and nationwide carriers have specific service needs (*e.g.*, local coverage) that may be best met by the regional carrier, but if roaming is not available, these consumers are forced to

⁵⁸ / *Id.* at 15.

⁵⁹ / *Id.*

compromise these needs in order to receive more expansive coverage, or vice versa. In fact, the inability to receive service outside of their carrier's service area is one of the top reasons that consumers cite for leaving a regional carrier when switching carriers.

Nationwide carriers thus have substantial leverage over regional carriers, since they can use the regional carriers' need for roaming service, along with the lack of any specific automatic roaming obligation, to either demand unreasonable roaming rates or to deny roaming service altogether in order to place the regional carriers at a competitive disadvantage and squeeze them out of the market. This behavior hurts not only the regional carriers themselves, but it also hurts consumers by forcing them to compromise on their service needs and decreasing their competitive options.

As the industry continues to consolidate and the number of remaining carrier options for consumers continues to shrink, it is urgent that the Commission adopt automatic roaming obligations for all CMRS carriers in order to establish and maintain a true competitive balance in the CMRS market to the benefit of all wireless consumers.

VII. TECHNICAL ISSUES

In addition to public interest and competition issues, roaming also involves certain technical issues that must be addressed. For example, while it is clear that a CDMA carrier cannot be required to accommodate roamers using GSM handsets due to the existing incompatibility of these air interfaces, it is less clear what accommodations should be made when a new technology or service is introduced or when a carrier makes changes or upgrades to its system.

Nevertheless, SouthernLINC Wireless' own experience has demonstrated that "technical issues" are often used by some carriers as a pretext for denying roaming, even though most of these issues have either already been addressed or can be easily resolved through good faith

negotiations between the carriers. For instance, with regard to dispatch/PTT and data roaming between iDEN carriers, the relevant technical issues would appear to have been resolved, given that Sprint Nextel and Nextel Partners currently provide these roaming services to each other and to foreign iDEN carriers.⁶⁰ The Commission must therefore be wary of claims that automatic roaming for any service – whether in general or between specific carriers – cannot be implemented for technical reasons, and the absence of good faith effort on the part of any carrier to negotiate these issues should weigh against any such claim.

A. The Impact of Roaming on Service Quality

Some carriers have expressed concern over the effect of roaming on the service quality of their own networks and the service quality that their customers would receive when roaming on another carrier's network. For carriers concerned about the quality of service that their customers will receive when roaming on other carriers' networks, SouthernLINC Wireless points out that, under its proposals (described in more detail in Section IX below), carriers would only be required to accommodate inbound automatic roaming – *i.e.*, they would be required to allow customers from other carriers to roam on their network, but they would not be required to allow their own customers to roam on other carriers' networks other than through manual roaming. This approach would allow carriers to assess the service quality available to their customers when determining whether to allow them to automatically roam on another carrier's network.

B. Impact of Carrier Changes or Upgrades to their Systems

The Commission has requested comment on how an automatic roaming rule would affect a carrier's ability to make certain changes to its system for "legitimate business reasons (*e.g.*,

⁶⁰ / See, *e.g.*, *Revisions of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Petition for Limited Waiver of Nextel Partners, Inc. at 10 – 11 (filed Oct. 17, 2005).

increasing capacity, spectrum efficiency, fraud control, or deployment of enhanced features),” as well as whether any automatic roaming requirements applicable to “2G” systems should also apply to upgraded 2.5G or 3G systems.⁶¹

As an initial matter, SouthernLINC Wireless is concerned with the Commission’s suggestion that the existence or applicability of an automatic roaming obligation be restricted to a particular technology or platform generation. The roaming problems that have been brought to the Commission’s attention thus far do involve 2G systems, but this is simply because 2G technologies are by far the most widely-used and widely-deployed in the current market, not because there is any problem that is inherent to 2G technologies themselves.

Furthermore, roaming is not only an issue of technology but also of policy and practice. An automatic roaming rule, such as the one proposed herein, should and must be technology neutral, and the only influence a carrier’s technology should have in a particular case is on the question of whether, on a case-by-case basis, roaming can occur, not whether it should occur.

This discussion raises the issue of determining when roaming can technologically occur between two carriers and should therefore be made available. SouthernLINC Wireless submits that roaming between two carriers should be presumed to be technologically feasible – and thus made available – when the carriers have the same or compatible air interfaces, including air interfaces that are backward-compatible (for example, a 2G or 2.5G CDMA handset could still operate on a 3G WCDMA network, although the handset would only be able to provide 2G/2.5G-level services).

Although compatible air interfaces alone are not always sufficient to make roaming technologically possible between two carriers, any additional technical issues are typically

⁶¹ / NPRM at ¶¶ 30 and 44.

relatively minor and can generally be resolved through good faith negotiations and efforts. In the case of SouthernLINC Wireless' attempts to obtain roaming with Nextel, Nextel consistently attributed the length of time it took for a roaming agreement to be reached to "significant technical hurdles" to iDEN roaming (even though Nextel had long been roaming with a Canadian iDEN carrier). However, while it took well over five years to get Nextel to even agree to discuss these technical issues with SouthernLINC Wireless in the first place, once Nextel finally agreed to discuss these issues in good faith, it took less than three months for the parties to work out these issues and all the details of a contract. As stated above, the relevant technical issues regarding dispatch/PTT and data roaming would also appear to have been resolved, since Sprint Nextel and Nextel Partners currently provide these roaming services to each other and to foreign iDEN carriers.

SouthernLINC Wireless therefore submits that any automatic roaming rule or other obligation should also require good faith efforts by both parties to work out any technical issues related to roaming. Similarly, SouthernLINC Wireless agrees with and supports the Commission's suggestion that whenever a carrier makes changes or upgrades to its system that may affect the ability of other carriers to access and obtain roaming on its system, the carrier must take reasonable actions in good faith "to facilitate another carrier's efforts to achieve the capability to access its system."⁶²

In the *NPRM*, the Commission requested comments on multi-mode handsets and the possible impact of such handsets on roaming.⁶³ As part of their application for Commission approval of their merger, Sprint and Nextel frequently referred to the possible development of dual-mode CDMA/iDEN handsets that would permit their customers to receive service over both

⁶² / *Id.* at ¶ 30.

⁶³ / *Id.* at ¶ 47.

companies' legacy networks.⁶⁴ At this time, no such handset is currently available, nor has there been any publicly-announced date for the introduction of such a handset, thus making it impossible at this time to address the numerous questions regarding the ability of dual-mode handsets to overcome the substitutability problems that inherently limit competition in the market for wholesale roaming services. These questions include, for example: (i) whether a dual-mode Sprint Nextel CDMA/iDEN handset would be able to work on carrier frequencies other than those utilized by Sprint Nextel; (ii) whether dual-mode or multi-mode handsets will make all wireless functions available (*e.g.*, would an iDEN roamer using such a handset on a CDMA network be able to get voice, but not be able to get PTT, data, etc?) or result in any other diminution of service when roaming; (iii) when such handsets may become available (and to what extent); and (iv) whether such handsets will even prove to be operationally or commercially viable (meaning that they may be a technology that quickly exits the marketplace rather than becoming a long-term fixture).

While the introduction of commercially viable multi-mode handsets could serve to mitigate the problem of access to roaming, there are still far too many unknowns to consider their possible impact as anything more than random speculation at this point, and the mere possibility of such technologies should therefore not be taken into account in the Commission's consideration of how current roaming issues should be addressed. Furthermore, SouthernLINC Wireless believes that its proposals, which include an obligation for carriers to enter into and conduct good faith negotiations regarding technical and other issues, are sufficiently flexible to accommodate any future introduction of multi-mode handsets into the market.

⁶⁴ / See, *e.g.*, *Sprint/Nextel Merger Application* at ¶ 25.

VIII. INSUFFICIENCY OF EXISTING REMEDIES

Currently, the Commission's only remedy available for CMRS carriers contending with demands for unreasonable rates, terms and conditions and/or discriminatory treatment in their attempts to obtain roaming is to file a complaint with the Commission pursuant to Section 208 of the Communications Act alleging violations of Section 201 (prohibiting unreasonable charges and practice) and/or Section 202 (prohibiting unreasonable discrimination) of the Communications Act.⁶⁵ This process is entirely inadequate as a "means of ensuring the development of automatic roaming services in a competitive CMRS market" and is not even sufficient to address blatant abuses that are already occurring. Evidence of the inadequacy of this remedy can be found in the paucity of formal roaming complaints that have actually been filed with the Commission.

The primary problem is that, while the Commission has frequently held out Sections 201 and 202 as available means for addressing disputes regarding automatic roaming, carriers lack any certainty or clarity regarding the actual applicability of these provisions given the absence of a specific automatic roaming obligation under the Commission's current rules.

For example, a complaint regarding Section 201 would involve allegations that a carrier's roaming practices or refusal to roam are "unjust and unreasonable," but there is still no usable precedent – nor has there been any direction, clarification, or guidance from the Commission – as to what roaming practices or types of roaming conduct it considers to be "unjust and unreasonable." The fact that there is currently no clear regulatory obligation for carriers to even provide automatic roaming also imposes a substantial barrier to a petitioner's ability to demonstrate that certain roaming practices or conduct are unjust and unreasonable, and a

⁶⁵ / See 47 U.S.C. §§ 201, 202, and 208.